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Mind the Gap: The Discrepancy Between the Normative Debate and Actual Use of Human Rights Language in International Climate Negotiations

Gregor Beck

Institute of Political Science
Technische Universität Darmstadt, Germany
gregor.beck@unitedgames.org

Cora Ditzel

Institute of Political Science
Technische Universität Darmstadt, Germany
cora-zon@t-online.de

Sofia Ganter

Institute of Political Science
Technische Universität Darmstadt, Germany
sofia-ganter@gmx.de

Olga Perov

Institute of Political Science
Technische Universität Darmstadt, Germany
op.perov@gmail.com

Abstract

There has been an emerging normative debate in political theory literature on how the impacts of climate change not only affect the environment, but also have dire consequences for the enjoyment of basic human rights in vulnerable regions. A human rights-based approach to climate negotiations could improve the debate beyond a mostly scientific and technical discussion. This paper analyzes a case study of how human rights are actually articulated within international climate negotiations and what role they play in the international political debate on climate change. Through an inductive analysis of state submissions and interview data collected at the 2nd session of the ADP during UNFCCC COP-19, we examine how state parties make use of human rights in international climate negotiations. The paper shows that despite the growing normative debate on the topic, almost no parties refer to human rights directly in the actual climate negotiations. When human rights are mentioned, they are more likely to be articulated by state groups, they are often referred to in an indirect way, and non-binding rights are articulated more often than universally binding human rights. This shows that there is a clear gap between the normative debate and the political realities of the linkages of human rights and climate change.

Author's Note

The authors are graduate students of political science and are finishing their Master of Arts in International Studies/Peace and Conflict Studies at the Universities of Frankfurt am Main, Germany and Darmstadt, Germany. They regard the fight against climate change as an important step towards sustainability.

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1. Introduction

In 2005, the Inuit people of Canada filed a petition to the *Inter-American Commission on Human Rights* accusing the United States of America of being largely responsible for climate change and, therefore, responsible for the negative effects that climate change has on the Inuit people (Hunter 2009: 336-337; Limon 2009: 441; Knox 2009: 479). This was one of the first explicit attempts to link violations of human rights to climate change. Even though the petition was rejected, it led to an increased scientific and political awareness of the negative effects climate change impacts may have on human rights. Since then countries that are facing serious threats due to climate change have been active in promoting a debate on the links between human rights and climate change. In 2009 a report by the *Office of the High Commissioner for Human Rights* (OHCHR) named the right to food, the right to adequate housing, the right to water, the right to self-determination and the right to life, among others, as human rights that relate most directly to climate change-induced impacts (OHCHR 2009).

There has been a considerable normative discussion in political theory literature on the linkage of human rights and climate change and the possible benefits and disadvantages of including a human rights approach into climate negotiations (e.g. Brandstedt/Bergman 2013; Caney 2008; Hiskes 2005; Knox 2009; Shue 2011; FIAN International 2010; OHCHR 2009; Oxfam International 2008; SPD 2013). By *normative*, we understand the discussion of an issue on the basis of whether this issue is desirable or not. However, *empirical* evidence on the actual use of human rights in these negotiations is scarce. It is of scientific interest to know if the emerging normative debate on the implications of climate change effects on human rights is also reflected in the actual political debate on the topic and how a human rights-based approach could influence ongoing climate negotiations. Based on our results, we argue that there is a considerable discrepancy between the normative debate and the empirical research in this field.

To address the aforementioned research gap, this study posed the following research question: *How do states use human rights in international climate negotiations?* To answer this question, we conducted a single case study of the 3rd meeting of the 2nd session of the *Ad Hoc Working Group on the Durban Platform for Enhanced Action* (ADP). We are aware that the selection of the ADP as our case does not allow inferences to the use of human rights in other forums and bodies of international climate negotiations. However, the ADP does lend itself as a particularly suitable case for a first systematic analysis for several reasons. The ADP negotiations within the *United Nations Framework Convention on Climate Change* (UNFCCC) process are a typical case in the field of climate negotiations, and as the ADP comprises a global membership, the discourses within the ADP negotiations are not regionally confined. The ADP is furthermore charged with the task of developing a follow-up agreement for the *Kyoto Protocol* until 2015

(IISD 2013: 2), so the outcome of the ADP negotiations is of particular relevance to all members of the international community and all future international climate negotiations.

In the following we will first take a look at the existing literature on links between human rights and climate change as well as the arguments brought up by the scientific community to argue for or against a human rights-based approach in climate negotiations. We will then outline the methodological approach we used to conduct our inductive research, and present the data corpus of the study and the methods used to analyze the data. This is followed by an overview of the findings of our analysis. Thereby, we will illustrate how human rights are referred to within the statements of states and state groups in the context of the ADP negotiations. In addition, we present some first insights into possible reasons for and against the articulation of human rights in the negotiations that were derived from interviews with various experts. As our research shows, human rights are of almost no significance to the negotiations in the ADP, and there is very little evidence of actual human rights usage. We will then put the results into a broader perspective, highlight some policy implications arising from them, and suggest questions for further research.

2. State of the Academic Debate and Research Gap

The academic debate on the link between climate change and human rights has mainly focused on the advantages and disadvantages of taking into account a human rights-based approach when dealing with climate change. This is what we call the current normative debate. The advantages of a human rights-based approach are grounded on the general recognition that the impacts of climate change affect several human rights such as the right to life or the right to health (e.g. Rajamani 2010; Dudai 2009). Accordingly, the latest comprehensive publications on climate change and justice argue in favor of a human rights-based approach (Jamieson 2014; Moellendorf 2014; Shue 2014). Some scholars argue that focusing on the link between human rights and climate change could bring attention to individual welfare, strengthen the voices of the most affected, and provide ethical perspectives in international climate negotiations currently focused on deal-seeking between countries (Rajamani 2010: 4; Limon 2009: 450-451). Sébastien Jodoin and Yolanda Saito point out that international human rights law could offer a legal justification for states to combat climate change and even impose obligations on states to adequately respond to climate change (Jodoin/Saito 2011). Furthermore, a human rights framework, with an established set of principles and quasi-judicial bodies (Hunter 2009: 361-362), could deliver binding principles that are currently lacking. Moreover, human rights could provide moral authority for calls to action against climate change and provide a set of moral principles that would place power inequalities and injustice at the center of the debate on climate change (Nicholson/Chong 2011: 126). Such justice arguments are based on the assumption that human inaction concerning the mitigation of climate change will have adverse effects for future generations (Hiskes 2005; Caney 2008; Bulkeley/Newell 2010). These authors consider this as unfair for future generations because they do not have a lobby and therefore are unable to defend their interests.

On the other hand, the literature also discusses possible disadvantages of linking human rights and climate change. Tim Hayward warns that a focus on rights instead of responsibilities could encourage state claims of a self-interested

character. He argues that there is a danger that some states might claim a right to pollute (Hayward 2007: 431). To Ron Dudai, it seems that the defenders of the link ignore some potential points of tension between human rights advocates and environmentalists. Thus, he argues in favor of remaining skeptical about the normative desirability of the link because human rights and climate change have very different foci. Dudai also considers practical problems by questioning whether the advocacy of human rights non-governmental organizations (NGOs) would bring enough added value to climate change debates to justify the invested resources needed by the already under-staffed human rights NGOs (Dudai 2009: 295-296). Dudai concludes that environmental movements have performed better than human rights movements in advocating their cause. In his view, the human rights framework is not adequately equipped to deal with climate change. Rather, human rights organizations should stick to their area of expertise (Dudai 2009: 305-306).

Nevertheless, most members of the scientific community are in favor of linking human rights and climate change. However, what is of great interest here is that even when calling for a human rights-based approach to climate change, the academic debate on the link almost completely remains on a theoretical normative level and thus lacks empirical research on the topic with few exceptions. Sébastien Jodoin conducted a research study on the dynamics of policy debates involving human rights issues during COP-15 (Jodoin 2010). Lavanya Rajamani analyzed human rights references in climate treaties and documented human rights-based interventions made by parties at climate negotiations (Rajamani 2010). Apart from these two studies, the literature on the topic only offers very little empirical data on human rights in climate negotiations. The two mentioned studies have been rather selective in their approach; the use of human rights by states is especially lacking in systematic research. So far, the debate seems to focus mostly on the theoretical and normative aspects of the issue. The goal of this paper is, therefore, to address this research gap, provide a first systematic analysis of human rights use in climate negotiations, and offer new data and insights through empirical results.

In sum, the prevalent normative arguments seem to suggest that relevant actors could also refer to human rights in climate negotiations in order to strengthen their positions. Therefore, our analysis focuses on the use of human rights language. By *human rights language* we mean the direct denomination of a specific human right or a human rights document. Our results in part four will highlight that this kind of language was largely absent from the documents analyzed in this study. Human rights do not seem to play a major role in the ADP negotiations. Thus, we argue in this paper that there is a disagreement and discrepancy between the academic normative debate and the empirical findings.

3. Methodological Approach

Considering the aforementioned lack of systematic analyses of empirical data in the yet under-researched field of human rights in climate negotiations, we chose a method triangulation approach in our single case study. We contended that the conflation of different methods of data collection and evaluation is better suited for crosschecking our findings and generating valid results beyond the empirical data of the single case (Bryman 2012: 392, 635). Hence, the data corpus consists of three datasets: documents, and two kinds of expert interviews.

The systematic analysis of the usage of human rights by states in the documents the states submitted to the ADP negotiations was the starting point of our research. We complemented these findings with two different kinds of semi-structured guideline-based expert interviews (Gläser/Laudel 2009) that were conducted for the most part during the COP-19. State representatives were interviewed as experts on the state position during the negotiations, and civil society observers (i.e. social scientists and civil society representatives) were interviewed as experts on the climate negotiations in a broader sense. The data from the interviews enhanced the confidence of the validity of the document analysis results. It also allowed us to gain deeper insight into the case that the analysis of the documents only offered an overview of (Meuser/Nagel 2009: 471).

The first part of the analysis was based on submissions of UNFCCC parties to the ADP workstream 1 that were submitted until October 18, 2013.¹ The data corpus contained 57 submissions, 33 made by 23 different states² and 24 submissions made by ten different state groups.³ The submissions were analyzed with Qualitative Content Analysis, using a selective coding procedure that started with the definition of a selection criterion, namely human rights. The recognition of human rights underlies development; therefore, we focused on universally binding human rights recognized in the *International Bill of Human Rights*⁴ as well as non-binding human rights. Subsequently, the submissions were screened through in order to mark text segments that mentioned human rights language, which means that they named a specific human right or referred to binding human rights documents. Such segments were sorted under the main category “direct human rights articulations” which is defined by the exact wording of the right (e.g. “right to development”) or the framing of an aspect of human life as being a right, e.g. “right of our vulnerable communities to live and prosper without having their lives threatened and affected by impacts of climate change” (AILAC submission 01.03.2013). For differentiating between the articulated rights, each different type of right was sorted to a specific sub-category. These sub-categories were also established in order to get information about the potential importance of certain human rights within the ADP process. Because human rights have a strong legal character, we expected that states might not often make use of human rights language in the ADP and instead refer to

¹ All analyzed submissions are available at <http://unfccc.int/bodies/awg/items/6656.php#workstreamone>, 14.01.2014.

² The 23 states were Algeria, Australia, Belarus, Brazil, Canada, China, Ecuador, Ethiopia, India, Indonesia, Japan, Kuwait, New Zealand, Norway, Pakistan, Rep. of Korea, Russia, Singapore, South Africa, St. Lucia, Turkey, USA, and Uzbekistan.

³ Submitting state groups were the African Group, the *Independent Alliance of Latin America and the Caribbean* (AILAC), the *Alliance of Small Island States* (AOSIS), the *Coalition for Rainforest Nations* (CfRN), the *Environmental Integrity Group* (EIG), the *European Union* (EU), the *Least Developed Countries* (LDC), the *Like-Minded Developing Countries* (LMDC) as well as two other group formations. The first group consists of Bangladesh, Cameroon, Costa Rica, Dominica, Dominican Rep., Gabon, Guyana, Honduras, Kenya, Nigeria, Papua New Guinea, Rep. of Congo, and Uganda (in the following: Group of 13). The second group is composed of Canada, Japan, New Zealand, Norway, and the USA (in the following: JUSCANZ+Norway).

⁴ The *International Bill of Human Rights* consists of the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR).

human rights in a more indirect way. Consequently, text segments that indirectly referred to human rights were sorted to the second main category “indirect human rights articulations.” Indirect human rights references were defined as *text segments that contain the (legitimate) need, will or entitlement to protect human beings, aspects of human life, or worries about climate change negatively affecting the lives of human beings.* Text segments that demanded respect for outcome documents that contain human rights references, e.g. the *Cancún Agreements*, were sorted under this category, too. Here again, sub-categories were established for each different type of right, e.g. “These climate change impacts in our countries have killed thousands of people and set back our poverty eradication and sustainable development” (LMDC submission 29.04.2013) was coded as the sub-category “right to life” of the main category, “indirect human rights articulation.” This LMDC submission clearly expresses the worry that climate change is affecting the lives of human beings. The sub-category “right to life” was coded here, because the *killing* of people represents a violation of this right.

The results of this first systematic analysis of all submissions to the ADP 2 provided us with the criteria for the theoretical sampling of state representatives for the expert interviews (Stern 2007: 117; Hood 2007: 157-159; Wiener 2007: 304). The two criteria for a diverse selection of state experts within our case were: (1) the number of direct human rights articulations in the submissions of the state or state group, and (2) the level of vulnerability of the state or state group to the negative impacts of climate change.⁵ To determine the vulnerability of each state actor, we followed the *Notre Dame Global Adaptation Index* (ND-GAIN), which integrates a variety of relevant factors.⁶ We classified the vulnerability of a state as “very high,” at a ND-GAIN Vulnerability score of 0.40 or higher. For state groups, the average of the group’s members’ ND-GAIN Vulnerability scores was the decisive indicator (see Figure 1). On the basis of this selection, we recruited interview partners among the state delegates to the ADP negotiations. The data from the state expert interviews afforded us a first valuable insight into their motives for or against human rights articulations.

In addition, interviews with observing civil society experts of the UNFCCC process such as NGO members and social scientists provided further insights and contextual information. The two selection criteria for the civil society experts were (1) their human rights expertise, and/or (2) their UNFCCC/ADP expertise. Both expert question guidelines contained broad questions about the general role of human rights in climate negotiations as well as more specific questions on human rights articulations by states. The state experts were also questioned on their reasons for or against the usage of human rights language.

⁵ The second criterion is based on the assumption that the level of vulnerability of a state’s population to climate change impacts may influence the decision to employ human rights language in climate negotiations and that highly vulnerable state actors were more likely to articulate human rights than less vulnerable states.

⁶ “Vulnerability – A country’s ND-GAIN Index score is composed of a Vulnerability score and a Readiness score. Vulnerability measures a country’s exposure, sensitivity and ability to cope with climate related hazards, as well as accounting for the overall status of food, water, health and infrastructure within the nation.” (<http://index.gain.org/ranking/vulnerability>, 24.01.2014).

The interview datasets were analyzed using a Constructivist Grounded Theory approach (Charmaz 2011).⁷ The data from the state expert interviews was analyzed in an open coding procedure in which the categories were derived inductively. The objective of the civil society expert interviews, which constitute a complementary dataset of this study, was to embed the prior analyses into their context and, even more importantly, to cross-check prior results. Therefore, this third dataset was analyzed in a process of selective coding (Titscher et al. 1998: 99-100) based on categories derived from the state expert interview analysis. The aim of the expert interviews was to highlight which prior results can be confirmed or disconfirmed and/or further developed by the two different groups of experts.

4. Results⁸

4.1 Results of Submission Analysis

The main result of the analysis is that human rights do not play a big role within the ADP, which is evidenced by the fact that only 25 out of 57 submissions contained any direct or indirect human rights articulations. At that, human rights were articulated rather in an indirect than in a direct way. Out of 89 identified text segments that referred to human rights, 70 were indirect human rights articulations, and were made by 17 different actors⁹ in 25 submissions. Direct human rights were coded only 19 times within seven submissions made by five different actors. 51.52% of all submitting actors articulated human rights indirectly, and only 15.12% of them articulated human rights directly. Furthermore, human rights language was only used by Non-Annex I parties,¹⁰ namely by the African Group, AILAC, Ecuador, the LDC and the LMDC.

Another result is that state groups did refer to human rights more often than single states did, both directly and indirectly. While state groups articulated them 58 times, states used them only 31 times. Nine out of 19 direct human rights codings were included in state submissions, but those nine were all made by Ecuador. In contrast, the ten identified direct human rights codings in the state group submissions were made by four different actors, namely the African Group, AILAC, the LDC, and the LMDC. The indirect codings show a comparable result: 22 indirect articulations were coded within submissions made by nine different states.¹¹ Nevertheless, state group submissions contained 48 of

⁷ Grounded Theory was employed as the method of analysis not to generate a new theory, but because of the inductive nature of the study and the previously unexamined empirical data.

⁸ All data that our results are based on can be provided to interested parties on request.

⁹ The following actors referred to human rights indirectly: African Group, AILAC, AOSIS, Australia, Belarus, China, Ecuador, EIG, Ethiopia, EU, JUSCANZ+Norway, India, LDC, LMDC, Norway, South Africa, Turkey.

¹⁰ The list of all Annex I parties to the UNFCCC is available at https://unfccc.int/parties_and_observers/parties/annex_i/items/2774.php, 17.02.2014. Most of the Non-Annex I parties of the UNFCCC are developing countries or economies-in-transition and “have not been subject to quantitative emission commitments up to now” (Winkler/Brouns/Kartha 2006: 472).

¹¹ Australia, Belarus, China, Ecuador, Ethiopia, India, Norway, South Africa, Turkey.

such codings that were made by eight different actors.¹² To sum up, only 39.10% of the states (nine out of 23 submitting states) articulated human rights directly or indirectly, compared to 80.00% of the state groups (eight out of ten submitting state groups).

Figure 1 demonstrates that the direct human right articulated the most within the submissions is the right to (sustainable) development. Ten out of 19 (52.63%) direct human rights codings are articulations of the right to (sustainable) development. Four different actors, Ecuador, the African Group, the LDC, and the LMDC, directly referred to this right.¹³ In contrast, other non-binding rights, such as the right to water¹⁴ and the rights of indigenous peoples,¹⁵ were mentioned only once. All other segments sorted under the main category of “direct human rights articulations” referred to universally binding human rights, but did not play a prominent role in the debate either (See Figure 1). All of these direct human rights articulations were made by Ecuador except for the right to life, which was mentioned by AILAC as well. The Ecuadorian submission was the only one that actively promoted a human rights-based approach. Ecuador not only made 47.37% (nine out of 19) of all coded direct human rights articulations, but it was also the only state that mentioned a central human rights document, the UDHR, and that pushed for the integration of human rights in the 2015 agreement (Ecuador submission 02.03.2013).

¹² African Group, AILAC, AOSIS, EIG, EU, JUSCANZ+Norway, LDC, LMDC.

¹³ Even though the right to (sustainable) development was proclaimed in the *Declaration on the Right to Development* by the *United Nations General Assembly* (UNGA) in 1986 (OHCHR 2014: 1), it is not (yet) a legally binding right on the international level (Fukuda-Parr 2012: 844). However, the right is legally recognized in the *African Charter on Human Rights and Peoples' Rights* and the *Arab Charter on Human Rights* (OHCHR 2014: 1).

¹⁴ The right to water “has not been explicitly recognized as a self-standing human right in international treaties” (OHCHR 2010: 3), that is the UDHR, the ICCPR or the ICESCR (OHCHR 2013: 5-6) as it is only implicitly included in the right to food. Therefore, the right to water is not a universally binding human right, even though it is included in certain regional and international declarations (OHCHR 2013: 4).

¹⁵ In 2007, the UNGA adopted the *United Nations Declaration on the Rights of Indigenous Peoples* (OHCHR 2013: 4, 8). Even though the Declaration contains many rights (e.g. the right to self-determination) that are recognized in the UDHR (OHCHR 2013: 8), it is not legally binding. The *Indigenous and Tribal Peoples Convention* from 1989 is a legally binding document, but we did not consider indigenous rights as *universally* binding rights in this study as this Convention has only been ratified by 22 states (ILO 2014).

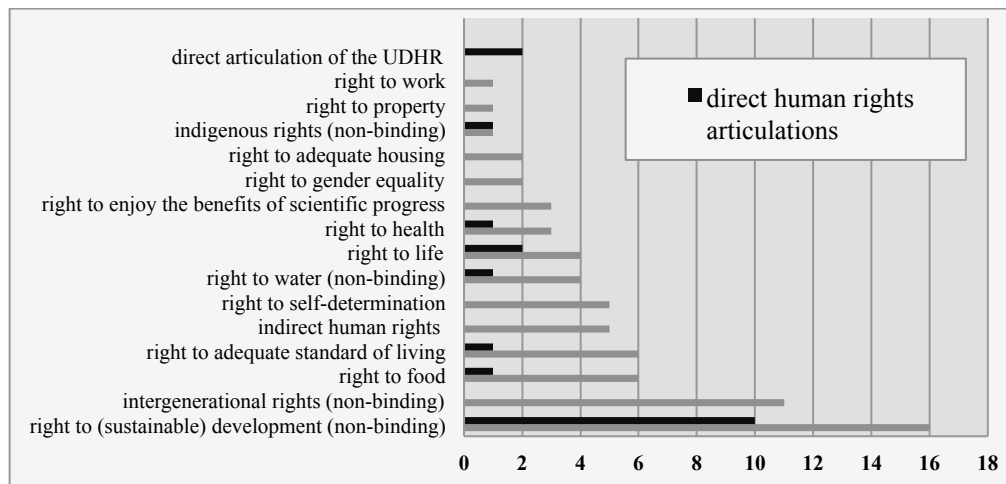


Figure 1: Number of direct and indirect human rights articulations by type of right (Own Illustration)

Concerning the indirect human rights articulations, non-binding and emerging human rights had been articulated most frequently. The right to (sustainable) development was again the right that was articulated the most, followed by intergenerational rights¹⁶ (See Figure 1). Nine out of the eleven intergenerational rights codings were made in the context of a UNFCCC citation or a reference to UNFCCC principles, because wording such as “protect the climate system for the benefit of present and future generations of humankind” (LMDC submission 13.03.2013) is included in the UNFCCC (UN 1992: Art. 3 (1)). Again, universally binding human rights like the right to self-determination or the right to life were less often mentioned than the aforementioned non-binding rights.

Another result is that most of the indirect human rights articulations (55.71%) were made by Ecuador (eight times) and the LMDC (31 times¹⁷), which were the two actors that referred most frequently to human rights both directly and indirectly. In all, indirect human right references were made by 66.67% (six¹⁸ out of nine) of the submitting Annex I parties. In comparison, only ten¹⁹ out of 22 (45.45%) submitting Non-Annex I parties articulated human rights in an indirect way.²⁰ Taken together with the aforementioned results that direct human rights articulations were made only by Non-Annex I parties, we conclude that

¹⁶ Intergenerational rights are not binding human rights so far. Nevertheless, some national constitutions, like the Norwegian or the Bolivian constitution, include a concern for future generations (Grosser 2008: 448). As intergenerational human rights are currently discussed in the scholarly debate (e.g. Hiskes 2005; Caney 2008) they were considered as emerging human rights in this study.

¹⁷ The LMDC is the actor articulating most indirect human rights; 29.00% of all indirect codings were found in LMDC submissions. However, this fact should not be overestimated as the LMDC made five submissions, so that on average a submission does only contain 6.2 indirect human rights articulations.

¹⁸ Australia, Belarus, EU, JUSCANZ+Norway, Norway, Turkey.

¹⁹ China, Ecuador, Ethiopia, India, South Africa, African Group, AILAC, AOSIS, LDC, LMDC.

²⁰ The EIG is not included in this calculation, because it consists of Non-Annex I as well as Annex I parties.

Annex I parties tend to refer to human rights in climate negotiations only in indirect terms.

4.2 Results of Expert Interview Analyses

As direct human rights articulations are unambiguous, less prone to our interpretation, and a lot more likely to stem from the actor's decision to explicitly use human rights than in the case of indirect articulations, we based our selection of state expert interviewees only on the direct human rights articulations. The results of the submission analysis revealed that the only state parties that articulated direct human rights in their submissions many times (more than three) were Ecuador and the state group LMDC.²¹ Despite neither of them being highly vulnerable to the impacts of climate change,²² they both constitute extremes for this study (Gerring 2007: 101-102). Therefore, we chose to interview both. Among the parties with few direct human rights articulations (from one to three) were only state groups. Our interview partners were a representative of the LDC,²³ a group highly vulnerable to the impacts of climate change, and a representative of AILAC²⁴ as a group with lower vulnerability. The majority of all parties did not articulate human rights directly in their ADP submissions. Among those, AOSIS²⁵ constitutes a particularly interesting case, because this state group did refrain from direct human rights articulations despite many of its members being highly vulnerable to the impacts of climate change.²⁶ All five state expert

²¹ The membership of the LMDC group is not fixed, but a LMDC submission from March 13, 2013 was submitted on behalf of Bolivia, China, Cuba, Dominica, Ecuador, Egypt, El Salvador, India, Iran, Iraq, Malaysia, Mali, Nicaragua, Saudi Arabia, Sri Lanka, Sudan, and Venezuela.

²² We are aware of the fact that some members of the state groups we classified as state actors with "lower vulnerability" are in fact particularly vulnerable to climate change impacts. The classifications are based on the ND-GAIN Index and the average score of all members of each state group (see part 3).

²³ According to the *Least Developed Countries Report 2013*, the UN recognize the following 49 states as the LDC: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Rep., Chad, Comoros, Dem. Rep. Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Lao People's Dem. Rep., Lesotho, Liberia, Madagascar, Malawi, Mali, Mauretania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Sao Tome & Principe, Senegal, Sierra Leone, Solomon Isl., Somalia, South Sudan, Sudan, Timor-Leste, Togo, Uganda, Tanzania, Tuvalu, Vanuatu, Yemen, and Zambia (UNCTAD 2013).

²⁴ The AILAC group that was formed in 2012 consists of Chile, Colombia, Costa Rica, Guatemala, Peru, and Panama (Honty 2012).

²⁵ The members of AOSIS are Antigua & Barbuda, Bahamas, Barbados, Belize, Cape Verde, Comoros, Cook Isl., Cuba, Dominica, Dominican Rep., Fiji, Micronesia, Grenada, Guinea-Bissau, Guyana, Haiti, Jamaica, Kiribati, Maldives, Marshall Isl., Mauritius, Nauru, Niue, Palau, Papua New Guinea, Samoa, Singapore, Seychelles, Sao Tome & Principe, Solomon Isl., St. Kitts & Nevis, St. Lucia, St. Vincent & the Grenadines, Suriname, Timor-Leste, Tonga, Trinidad & Tobago, Tuvalu, and Vanuatu (AOSIS 2014).

²⁶ The (self-)perception of the state experts we interviewed corresponded to the classification of our selection matrix (see Table 1). Palau/AOSIS (2013: 1) and LDC (2013: 2) both viewed their state groups and were named by others (Chile/AILAC 2013: 3; Ecuador 2013: 3) as being particularly vulnerable and already affected by adverse

interviews were conducted with state or state group representatives who were explicitly following the ADP negotiations.

Table 1: Selection matrix of state/state group experts (Own Illustration)

States/state groups (submissions) with	very high vulnerability to impacts of climate change	lower vulnerability to impacts of climate change
many direct human rights articulations (>3)		<u>Ecuador</u> (9), <u>LMDC</u> (5)
few direct human rights articulations (1-3)	African Group (1), <u>LDC</u> (2)	<u>AILAC</u> (2)
no direct human rights articulations	Ethiopia, India, Pakistan, <u>AOSIS</u> , CfrN, Group of 13	Algeria, Australia, Belarus, Brazil, Canada, China, Indonesia, Japan, Kuwait, New Zealand, Norway, Rep. of Korea, Russia, Singapore, South Africa, St. Lucia, Turkey, USA, Uzbekistan, JUSCANZ+Norway, EIG, EU

As it turned out, there were not many civil society experts observing the ADP negotiations as such, but all civil society interviewees were longtime observers of different processes within the UNFCCC. In total, our civil society expert interview dataset consists of six interviews with the following experts from NGOs and academia: Marcial Arias, spokesperson for the indigenous NGO *Coordinadora de las Organizaciones Indígenas de la Cuenca Amazónica* (COICA); Eva Filzmoser, director of the NGO *Carbon Market Watch*; Alyssa Johl, senior attorney at the NGO *Center for International Environmental Law* (CIEL); Victoria Tauli-Corpuz, executive director of the indigenous NGO *Tebtebba* and Philippines delegate on REDD+; Wolfgang Sterk, researcher at the *Wuppertal Institut für Klima, Umwelt, Energie*; and Sébastien Jodoin, researcher at the *Yale School of Forestry & Environmental Studies*.²⁷ In some regards, the civil society experts' answers complemented the responses of state experts even though the state experts seemed often unaware of the scientific debate of which some of the civil society experts were not only aware of but active participants in.

The evaluation of the interview data confirmed our central submission result that human rights do not play an important role in the ADP negotiations at all (Johl 2013: 1; Filzmoser 2013: 1; Sterk 2013: 1; Tauli-Corpuz 2013: 1). Based on the state expert interviews, Ecuador was the only party explicitly pursuing a human rights-based approach to the ADP negotiations and the 2015 agreement (Ecuador 2013: 1). El Salvador/LMDC was supportive of this position, but saw the primary importance rather in human rights safeguards for implementation mechanisms (El Salvador/LMDC 2013: 3-4). Chile/AILAC supported a more prominent role of human rights in the negotiations but did not pursue this in the ADP, mostly out of reservations about the operationalization of human rights in this context (Chile/AILAC 2013: 1, 2). The LDC group had not deliberated yet on purposely including human rights language into the negotiations, but it was open for "moral" arguments and considered its references to the vulnerability of people as an inclusion of human rights aspects (LDC 2013: 1-2). Both LDC

climate change impacts. From this it follows that, contrary to our assumption, being highly vulnerable does not prompt parties to adopt human rights language in the negotiations.

²⁷ The expertise backgrounds are as follows: Sterk is ADP expert, Tauli-Corpuz, Johl and Jodoin are REDD experts, and Filzmoser is CDM expert. Arias has been observing the COPs for 15 years.

(2013: 1) and Chile/AILAC (2013: 2) were less aware of their own few direct human rights articulations than of their indirect references to them.²⁸ Palau/AOSIS deliberately refrained from framing climate change as a human rights issue due to perceived external pressure, and instead focused in the negotiations on human suffering as an indirect reference to human rights (Palau/AOSIS 2013: 1). The civil society experts also contended that human rights are articulated more often indirectly rather than directly (Filzmoser 2013: 1; Johl 2013: 4, 5; Tauli-Corpuz 2013: 4).

In view of the states or state groups that champion human rights within the ADP negotiations, the expert interviews only partly confirmed the findings from the submission analysis. The experts seemed to not be fully aware that state groups were (much) more prominent in articulating human rights directly than states on their own. The experts named Bolivia as a human rights champion (LDC 2013: 2; Arias 2013: 1, 2; Jodoin 2013: 4; Johl 2013: 7) and “some European countries together with Mexico” (Chile/AILAC 2013: 1; see also Jodoin 2013: 2; Johl 2013: 2), which we interpreted as a reference to the EIG.²⁹ Chile/AILAC also named itself as one of the parties referring to human rights in a previous session (Chile/AILAC 2013: 2), and did in fact articulate direct human rights twice in its submission to the ADP at COP-19. Furthermore, the civil society experts named Ecuador, Venezuela, Brazil, Argentina, the Philippines, the Maldives, and the state group ALBA (Tauli-Corpuz 2013: 2; Arias 2013: 1, 2; Jodoin 2013: 4; Johl 2013: 2). Ecuador was justly identified as one of the strongest proponents of human rights in the climate negotiation context. Bolivia did not make any submissions to the ADP by itself, but it is a member of the LMDC group and the author of at least one of their submissions (LMDC submission 12.09.2013). The EIG submissions on the other hand did not contain any direct human rights articulations (and only one indirect reference), and neither did Brazil’s submissions. The other mentioned state parties did not contribute to the ADP with their own submissions within the evaluation period. The result that arises from all three analyses is that Bolivia and Ecuador have been using human rights and were perceived as doing so.

The divergence from the submission results was more apparent regarding the human rights that state parties considered as important in the climate negotiation context. The rights mentioned by the interviewees as important for states in this context were gender equality (Chile/AILAC 2013: 1, 2), the rights of indigenous peoples (El Salvador/LMDC 2013: 4; Sterk 2013: 1; Johl 2013: 5), the collective right to enjoy and utilize the natural wealth and resources (El Salvador/LMDC 2013: 1), the collective right to self-determination (Palau/AOSIS 2013: 1; Johl 2013: 5), the right to an adequate standard of living (Ecuador 2013: 1), and the still non-binding human right to development (El Salvador/LMDC 2013: 1), and intergenerational human rights (Ecuador 2013:

²⁸ Admittedly, the right that the LDC group articulated directly in their submission is the non-binding right to (sustainable) development (LDC submission 03.03.2013). This right not being universally recognized as a human right may explain why the LDC expert was not aware of this articulation. AILAC on the other hand refers directly to the right to life and the right to an adequate standard of living in their submission from 01.03.2013.

²⁹ The EIG consists of Mexico, Liechtenstein, Monaco, Rep. of Korea, and Switzerland (see https://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php, 20.02.2014).

1).³⁰ Only three of these human rights (right to adequate standard of living, rights of indigenous peoples, and right to development) are counted among the rights that were articulated directly in the submissions, and only the non-binding right to development was articulated by the same party (LMDC) as in the submissions.

The expert interviews offered us a first insight into possible reasons for and against the articulation of human rights by state actors. Since Ecuador and the LMDC group were the only parties articulating direct human rights in their submissions purposely and to an exceptional extent, they were the only ones to give us an insight into the reasons for articulating human rights in the ADP. An important reason mentioned by both was because they wanted human rights to be integrated (to some degree) into the 2015 agreement (Ecuador 2013: 1; El Salvador/LMDC 2013: 3). Furthermore, both of these parties took the moral stance that the human rights of their population take precedence over climate mitigation (Ecuador 2013: 2; El Salvador/LMDC 2013: 4). Human rights are “the limit that we [Ecuador] are not willing to breach” (Ecuador 2013: 2). Ecuador pushed for human rights in the ADP for two additional interconnected reasons. First, it sought to remind other parties that they are already part of the internationally established and recognized human rights regime which they may not breach within the climate change context, a notion that was endorsed by several civil society experts as well (Filzmoser 2013: 3; Sterk 2013: 4; Tauli-Corpuz 2013: 4). And second, invoking this universally accepted international regime could help to dissolve the considerable discord in the ADP on the interpretation of equity (Ecuador 2013: 3). The civil society experts addressed two further potential reasons for human rights articulations which seemed substantiated given the submission analysis results: Human rights are articulated among other things for political reasons or as a strategy especially of left-leaning South American states which use them embedded in their general political orientation (Sterk 2013: 2-3). Furthermore, the reference to human rights may be seen as a consequence of and an attempt to prevent human rights violations through implementation measures. “The reasons why some states are mentioning it [human rights] is because it has been highlighted what can go wrong if it’s not mentioned explicitly” (Filzmoser 2013: 2).

The reasons against human rights articulations in climate negotiations were more numerous. One important reason that was mentioned by four of the five state experts and two of the civil society experts was that many state parties have not (yet) considered that there is a close link between the fight against climate change and human rights. This means that these state parties have not thought about adopting human rights language to negotiations that focus on climate issues (El Salvador/LMDC 2013: 4; LDC 2013: 1-2; Palau/AOSIS 2013: 4; Chile/AILAC 2013: 2; Sterk 2013: 1; Tauli-Corpuz 2013: 1, 3). This disregard is a strong indicator of the vast gap between the normative literature and political reality. It confirms our general impression of the negotiations: the academic debate on the linkages between human rights and climate change has not yet reached the political debate and the reality of the negotiations. Many reasons are, however, directly related to the structure of the UNFCCC. First of all, the

³⁰ Here, again, the responses from state experts and civil society experts somewhat diverged. The interviewed civil society experts thought that in addition to the rights of indigenous peoples and the right to a nation state states would articulate the right to food, right to water and the right to adequate housing (Sterk 2013: 2; Johl 2013: 6).

Convention contains no references to human rights,³¹ therefore the debates never framed climate change as a human rights issue (Palau/AOSIS 2013: 4). Furthermore, interviewees deplored the dominance of powerful actors, i.e. “developed countries,” that are simply unwilling to talk about human rights in the climate negotiations context (Arias 2013:1; Jodoin 2013: 2, 3) and “to put economic interests at stake to act” (Ecuador 2013: 3-4). The Palauan interviewee was more outspoken and named several countries (e.g. USA, Japan, Canada) and the EU as those parties that he perceived as highly influential yet obstructive actors for the progress of the climate negotiations (Palau/AOSIS 2013; Ecuador 2013: 1). “If we continue to talk about human rights I don’t think they’re gonna wanna listen to us” (Palau/AOSIS 2013: 6). Other reasons against the articulation of human rights that were mentioned include the very strong legal aspect that rights language contains (LDC 2013: 2) which many countries may shy away from because of sovereignty concerns (Sterk 2013: 1; Tauli-Corpuz 2013: 4) and to avoid additional obligations and costs that they just cannot or do not want to afford (Jodoin 2013: 2; Johl 2013: 4-5). To a large extent it is also the structure of the negotiations process itself that inhibits parties from integrating human rights. Some state actors worried that the introduction of human rights into the already highly complex process of international climate negotiations would only further increase the complexity of the issues at hand and create new problems (Chile/AILAC 2013: 2, 3; Palau/AOSIS 2013: 8; Sterk 2013: 4; Johl 2013: 7-8) or shift the focus further away from the main issue, mitigation of climate change, to the “side issue” of human rights (Palau/AOSIS 2013: 8). Moreover, the LDC expert (2013: 1) located human rights on the individual level and international negotiations between sovereign countries, by contrast, on the international level. References to the individual level may be deemed unnecessary or inappropriate in the context of international negotiations. There was large overlap between the reasons against human rights articulations given by state experts and the ones observed or presumed by the civil society experts. However, many civil society experts (Tauli-Corpuz 2013: 2-3; Filzmoser 2013: 3; Johl 2013: 5) still advocated a human rights-based approach to climate negotiations because “the underlying rationale is all about human rights” (Johl 2013: 5).

Concerning a possible change of the role of human rights, the experts were not unanimous. Jodoin stated that the importance of human rights in climate negotiations had a peak in Cancún and has since then decreased (Jodoin 2013: 2). Johl added that the conversation has not progressed since Cancún (Johl 2013: 2). She argues that the institutional linkages between the human rights and the climate change regimes are still quite weak. For Johl, a clear mandate by the Human Rights Council on the issue of human rights and climate change would help to move things further by raising awareness on the implications climate change has on human rights and by highlighting which rights need to be protected in relation to that (Johl 2013: 3). On the other hand, Sterk and Filzmoser (2013: 4) stated that the importance of human rights within the negotiations is slowly increasing, even though Sterk qualified this statement by limiting it to REDD (Sterk 2013: 1).

³¹ This is also a matter of interpretation. Both Ecuador and El Salvador/LMDC, the human rights-articulating parties, see human rights implicitly included in the principles of the Convention (“I think there are many principles in the Convention itself that promote human rights, not explicitly but implicitly also.” (Ecuador 2013: 1); El Salvador/LMDC 2013: 1).

4.3 Synthesis of the Results

The results of our research clearly show that human rights did not play a major role in the negotiations of the ADP at COP-19. Only 25 out of 57 submissions contained any human rights references at all and most of those were indirect references. This was further confirmed by the state and civil society experts who agreed that human rights are of almost no importance in the ongoing negotiations.

If human rights are articulated in submissions or within the negotiations, state groups are more likely to refer to them than single state parties, and non-binding rights are mentioned much more often. There has, however, not been a clear distinction by the state experts regarding which human rights are seen as “(more) important” rights within the climate negotiations. When arguing for the inclusion of a human rights-based approach to climate negotiations, state experts stated that such an approach could help dissolve discord in ADP negotiations. Furthermore, parties would be reminded of their existing obligations under an already established and internationally accepted human rights regime.

Asked about possible hindrances for the integration of a human rights-based approach in climate negotiations, several reasons were pointed out. Surprisingly, many state experts thought that state parties have simply not yet considered the link between human rights and climate change, showing a clear gap between the progress of the normative scientific debate and the actual political debate on the topic. The structure and the process of climate negotiations at the COP were heavily criticized and seen as another hindrance for the inclusion of human rights into the negotiations, already starting with the wording of the Convention itself, which does not contain any human rights language. The interviewed experts also argued that introducing a human rights-based approach to the negotiations would further increase the complexity of an already complex negotiation process. One of the main obstacles, however, was, according to state experts as well as civil society experts, the unwillingness of the dominant and powerful actors to include this approach out of reservations that it could entail further costs and obligations for them.

5. Conclusion and Outlook

This study has dealt with the role of human rights in the ADP negotiations at COP-19 by examining how they are used by state actors and shedding some light on potential reasons for the (non-)use of human rights language. The empirical research has revealed that human rights do not play a major role for states in the ADP negotiations. The analyses of documents and expert interviews showed that there are only few states that use human rights language in the negotiations. For the most part, states seem to be unaware of the normative scientific debate which links human rights and climate change. This first systematic inductive empirical study presented new data concerning the empirical side of this debate. Even though this study only analyzed the negotiations of one body, namely the ADP, it offered some interesting and significant findings concerning the debate on the relationship between human rights and international climate negotiations. These findings should be further evaluated against the backdrop of human rights articulations in other UNFCCC bodies. It is reasonable to assume that certain rights such as indigenous rights and

the right to self-determination may play a more prominent role in negotiation bodies such as REDD+ or CDM. A systematic analysis of other bodies would provide new insights and add to the empirical understanding of the role that human rights play in international climate negotiations as a whole.

Our study discovered that there are underexposed additional aspects in the negotiations that came up during the interviews and that should be considered in further research. Some states feel the prevalence of injustice and inequality in the negotiations. Power relations are seen as a major hindering reason for the integration of human rights language. These aspects are the reason why we consider the following policy implications to be of importance:

Given that until now civil society organizations and activists, not states, have been the main actors pushing for a human rights-based approach in climate negotiations, states should be more open to their arguments and the implications of this approach. Even though human rights can be misused by powerful states in order to defer effective climate commitments, they can still provide good arguments for less powerful, vulnerable states, as they are based on the already established human rights regime. This could strengthen the position of vulnerable states and lead to their empowerment within the international climate negotiation process.

Furthermore, due to the existing adverse effects of unequal power structures at the negotiations, a reform of the negotiation process should be considered and encouraged. In order to enhance participation justice, the number of delegates could be limited to the size of the smallest delegation. Alternatively, an international fund could be set up for less affluent countries to ensure that they are adequately represented. This goes hand in hand with a reduction of the number of simultaneous negotiation meetings. Moreover, the host country should provide all state delegations with adequate office space in order to offer them appropriate working conditions.

Unequal power structures and a lack of awareness of the scholarly debate are the main reasons for the theory-praxis-gap on the political side. This gap can further be explained by the characteristics of normative science itself, which offers theoretical arguments but does not make any claims about their empirical application. However, our inductive study suggests that there is unawareness of the normative arguments even though there is openness and to some extent a need for these arguments on the side of the less powerful and more vulnerable state actors. This is telling of the process of climate negotiations and of the acceptable contributions to the political debate. In order to close the gap, more research on the issue of linking the theory and politics of climate negotiations is needed: Please, mind the gap!

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